

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
David C. Boyd
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Great River
Energy for a Site Permit for the Elk River
Peaking Station

ISSUE DATE: August 1, 2007

DOCKET NO. ET-2/GS-07-715

ORDER ACCEPTING APPLICATION,
INITIATING FULL REVIEW, REFERRING
TO OFFICE OF ADMINISTRATIVE
HEARINGS AND NOTICE OF HEARING

PROCEDURAL HISTORY

On May 18, 2007, Great River Energy (GRE) proposed to build a new electric generator and related facilities, to be called the Elk River Peaking Station. The simple-cycle combustion turbine would be designed to use natural gas or ultra-low sulfur diesel oil to generate approximately 175 megawatts (MW) of power during periods of peak demand.¹

On June 14, 2007, GRE applied for a permit to build its proposed generator on the 11-acre plot in Sherburne County, Minnesota, containing GRE's existing Elk River Station.

On July 7, 2007, the Minnesota Department of Commerce (the Department) recommended that the Commission find that GRE's Site Permit application is complete.

The Commission met on July 12, 2007, to consider this matter.

On the same date that it issued this Order, the Commission issued its ORDER ACCEPTING [Certificate of Need] FILING AS SUBSTANTIALLY COMPLETE AND ADOPTING REVIEW PROCESS.²

¹ See *In the Matter of the Application of Great River Energy for a Certificate of Need for the Elk River Peaking Station*, Docket No. ET-2/CN-07-678.

² *Id.*

FINDINGS AND CONCLUSIONS

I. Jurisdiction

No person may construct a large electric power generating plant -- including any plant capable of generating 50,000 kilowatts or more³ -- except on a site approved by the Commission.⁴ Because GRE's proposed 175 MW plant qualifies as a large electric power generating plant, GRE must apply for a Site Permit as set forth in Minn. Rules part 4400.1250.

Consideration of GRE's siting application proceeds in accordance with the requirements of Minn. Stat. Chapter 216E and Minn. Rules, Chapters 1405 and 4400.⁵ In particular, once GRE's application is complete, the Department may proceed to analyze the siting proposal for environmental impact and to solicit public participation.

II. Substantial Completeness of the Filing

The Department filed comments on the completeness of GRE's June 14, 2007 application. The Department indicated that GRE has met the filing requirements for completeness.

No party asserted that GRE has not met the filing requirements for completeness.

Based on the Department's recommendation and its own review, the Commission finds that GRE has met the filing requirements for completeness.

III. Referral to the Office of Administrative Hearings

The Commission finds that it cannot resolve all issues raised by the petition on the basis of the record before it; those issues turn on specific facts that may be best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a Report to the Commission.⁶ Following receipt of the Administrative Law

³ Minn. Stat. § 216E.01, subd. 5.

⁴ Minn. Stat. § 216E.03, subd. 1.

⁵ Prior to recently enacted energy legislation, the Commission had the responsibility and authority to issue certificates of need and the Environmental Quality Board (EQB) had the responsibility and authority to issue site or route permits. In 2005, the Minnesota Legislature transferred the EQB's siting and routing authority to the Commission and encouraged a certain level of combining of the two processes. See S.F. 1368 - 84th Legislative Session, Article 3, Section 17 and Minn. Stat. § 216B.243, subd. 4.

⁶ Minn. Rules, Part 1405.2400.

Judge's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Chapters 14 and 216E.⁷

IV. Administrative Law Judge

The Administrative Law Judge assigned to this case is Richard C. Luis. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2542.

V. Hearings

A. Prehearing Conference

A prehearing conference will be held in this case on Wednesday, August 8, 2007 at 10:00 a.m. in the Small Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Pursuant to Minn. Rules, Part 1405.1100, the purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential interveners, and other interested persons, should attend the prehearing conference.

The Administrative Law Judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the Administrative Law Judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the Administrative Law Judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the Administrative Law Judge.

B. Public Hearing/Contested Case Hearing

A public hearing following the contested case format prescribed by Minnesota statutes⁸ and rules⁹ will be held in this matter. The hearing will include cross-examination by parties, questioning by interested persons, and direct testimony or comments from the public. Conduct of the hearing is addressed more fully below in Section VIII (Procedural Outline), below.

The date, place, and time of the public hearing cannot be determined at this time. The public hearing/contested case hearing is to be held after the Department has prepared a draft Environmental Impact Statement (EIS) on this proposed project pursuant to Minn. Rules,

⁷ Minn. Rules, Part 1405.2500. See also Minn. Rules, Part 4400.1900.

⁸ Minn. Stat. Chapter 14.

⁹ Minn. Rules, Chapter 1405.

Part 4400.1700.¹⁰ At this time the completion date for the draft EIS it is not determinable with enough certainty to warrant issuing notice of a fixed date for the public hearing.

Accordingly, since this Order is transferring jurisdiction over this matter to the Office of Administrative Hearings for purposes of conducting the contested case proceeding, the date, time, and place of the public hearing or hearings will be determined by the Administrative Law Judge assigned to this matter in light of developing circumstances. This information will be duly noticed as required by applicable statute and rule.¹¹

VI. Public Participation

A. Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by legal counsel, or by a person of their choice, or they may represent themselves. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, Part 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

B. Public Adviser

The Commission has authorized the Department to name a public adviser for the project. The public adviser is someone who is available to answer questions from the public about the permitting process. In this role, the public adviser may not act as an advocate on behalf of any person. The Department has named Deborah Pile, Manager of the Department's Energy Facilities Permitting Unit, to serve as the Public Adviser for this project. Her address is Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St Paul, MN 55101-2198 and her phone number is (651) 297-2375.

C. Commission's Representative; Advice Regarding Procedures

As required by statute,¹² the Commission designates the following staff members to facilitate and coordinate public participation in this proceeding:

Bret Eknes, Facilities Planner
Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147
bret.eknes@state.mn.us
(651) 201-2236 (voice)
(651) 297-7073 (fax)

David Jacobson, Facilities Planner
Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147
david.jacobson@state.mn.us
(651) 201-2238 (voice)
(651) 297-7073 (fax)

¹⁰ Minn. Stat. § 216E.03; Minn. Rules, Parts 4400.1800 and 4400.1350, subp. 3.H.

¹¹ Minn. Rules, Part 4400.1800 (Contested Case Hearing), subd. 1 and Minn. Stat. § 216E.03, subd. 6 (Public Hearing).

¹² Minn. Stat. § 216B.243, subd. 4.

The member of the Attorney General's staff who may be contacted for advice on matters dealing with Commission procedures is Alison Archer, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-5945.

D. Availability of Materials

Interested persons may review all materials, including all prefiled testimony, at the Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St. Paul, MN 55101-2198 as soon as they have been filed. To arrange a viewing of these materials, interested persons may contact the Public Adviser, Deborah Pile, at the Minnesota Department of Commerce or by phone at (651) 297-2375.

E. Parties, Persons, and Intervention

Currently, the only party to this case is the Applicant, GRE.¹³ The name and address of the person designated to receive all notices on behalf of the Applicant is Mark Strohfus, Environmental Project Leader, 17845 East Highway 10, P.O. Box 800, Elk River, Minnesota 55330-0800.

Other persons¹⁴ who wish to be granted permission by the Administrative Law Judges to intervene in this matter, must do so pursuant to Minn. Rules, Part 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition and Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules, Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention within seven days of service of the petition, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the Administrative Law Judge pursuant to Minn. Rules, Part 1405.1500, subp. 2, and the

¹³ "Party" refers to applicant, persons proposing routes or sites which the board orders to be considered pursuant to Minnesota Statutes, chapter 216E and rules adopted thereunder, and persons granted permission to intervene pursuant to part 1405.0900. Minn. Rules, Part 1405.0200, subp. 3. State agencies, participating Department staff, and citizen committees appointed by the Commission must intervene to attain party status.

¹⁴ "Person" refers to an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized. Minn. Rules, Part 1405.0200, subp. 4.

responsibilities to submit pre-filed testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. Rules, Part 1405.0500, subp. 1, and is not intended to be comprehensive. All persons and parties are urged to refer to Chapter 1405 to identify the scope of rights and authority to act given “persons” or restricted to “parties” under the various provisions of that Chapter.

F. Advisory Task Force

Where needed, the Commission has the discretion to adopt one or more advisory task forces to aid in analyzing an application for siting.¹⁵ Having reviewed GRE's application, the Department finds insufficient need to organize a task force. Among other considerations, the Department notes the following:

- GRE's recommended project site is on property that is already zoned for industrial facilities, and indeed already has an electric generator.
- GRE already owns the property at the proposed site.
- While GRE may modify the transmission line that connects the ultimate project site to the transmission grid, GRE does not propose to increase the line's voltage or acquire additional rights-of-way.
- The proposed generator itself is relatively uncomplicated.

Based on a review of GRE's siting proposal and the Department's recommendation, the Commission finds that no advisory task force is required for this matter.

VII. Issues to be Addressed

The proposed generating plant is subject to a contested case proceeding. In general, the issues referred for contested case proceedings are whether the Commission should approve, disapprove, or approve with conditions GRE's request for a site permit for the generating plant. Parties shall specifically and thoroughly address the requirements of Minn. Stat. §§ 116C.51 to 116C.69 and Minn. Rules, Chapter 4400. They may also raise and address other issues relevant to GRE's siting proposal.

VIII. Procedural Outline

A. Hearing Procedure: Controlling Statutes and Rules

Public hearings conducted pursuant to the contested case procedures of Minn. Stat. Chapter 14 are

¹⁵ Minn. Stat. § 216E.08, subd. 1; Minn. Rules Part 4400.1600.

required for the proposed generator under Minn. Stat. § 216E.03, subd. 6. The associated changes to the transmission line do not require a contested case proceeding.

The public hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 and Minn. Rules, Parts 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. Rules, Parts 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, Parts 7829.0100 to 7829.3200.

Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, Parts 1405.1400 to 1405.2300.

B. Hearing Procedures - Availability

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

C. Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

IX. Time Constraints

The Commission is required to make a final decision on a site permit application within one year after the application is found to be complete.¹⁶ By this Order, GRE's application is determined to be complete. The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of this time constraint.

X. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to generator siting cases, among others. Persons appearing in this proceeding may be subject to

¹⁶ Minn. Stat. § 216E.03, subd. 9 and Minn. Rules, Part 4400.1900. The Commission may extend this time line for up to three months for just cause or upon agreement of the applicant. *Id.*

registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

XI. *Ex Parte* Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, Parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission accepts the June 14, 2007 application of Great River Energy for a site permit for its Elk River Peaking Station as complete. The Department is hereby authorized to designate a public advisor in this matter, as set forth above, and otherwise to initiate the full review process under Minn. Rules Chapter 4400
2. No advisory task force is necessary in this matter.
3. Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
4. A prehearing conference shall be held on Wednesday, August 8, 2007, at 10:00 a.m. in the Small Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.
5. The date, time, and place of the public hearing will be set by the Administrative Law Judge and duly noticed in due course.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

